

PHILLIP REYNOLDS
Claimant

MIDWEST DRYWALL CO., INC.
Respondent

ZURICH AMERICAN INSURANCE GROUP
Insurance Carrier

ORDER

ISSUES

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant, a resident of Union Star, Missouri, contacted Roger Lee Postlewait, respondent's field superintendent, regarding the possibility of obtaining employment. Mr. Postlewait and claimant had worked together before at a job in 1998. Mr. Postlewait advised claimant that he did have a job available for him if claimant was interested, but that claimant would have to fill out an application and submit to a drug screening test. Claimant agreed. Claimant then traveled to Shawnee, Kansas, where he filled out the application.

Claimant then returned to Missouri, where he underwent the urinalysis test. Claimant was then instructed to take the urinalysis results to the Kansas City International Airport, and particularly to the office trailer of Burns and McDonnell, the general contractors on the job where respondent was a subcontractor. Claimant testified that he was advised at Burns and McDonnell whether he passed or failed the test. Claimant testified that apparently he passed because, within a couple of days, he was put to work at the Kansas City International Airport location by Midwest.

While working at the Kansas City International Airport for respondent, claimant was hanging dura rock, which he described as 75-pound individual sheets. Claimant began suffering back pain, which progressively worsened. Claimant did not, at first, consider this to be a work-related accident, as claimant had a history of liver problems.

Claimant advised Mr. Postlewait that he was going to have to take a few days off in order to take care of his back problem. Mr. Postlewait testified that claimant stated, at that time, that it was a preexisting problem and not related to his work. Claimant indicated it was a long-term problem. Two employees of respondent, Sherman Phelps and Charles Eaton, filed affidavits verifying the fact that claimant said this was a preexisting condition and not work related.

K.S.A. 44-506 restricts the applicability of the Workers Compensation Act when workers are injured outside the state of Kansas. However, jurisdiction can be found if the principal place of employment is within the state or the contract of employment was made within the state, unless the contract otherwise provides.

In this instance, respondent's office was located in Shawnee, Kansas. However, the only indication in the record regarding where respondent was doing business identifies the Kansas City International Airport, located in Missouri. There is no testimony in the record as to whether respondent does business at any other location.

With regard to where the contract of employment was made, Kansas case law states that the contract is "made" when and where the last act necessary for its formation is done.¹

In this instance, claimant contacted respondent by telephone and was advised of a job opportunity if claimant would fill out an application and submit to a urinalysis. Claimant accepted that offer while in Union Star, Missouri.

¹ *Smith v. McBride & Dehmer Construction Co.*, 216 Kan. 76, 530 P.2d 1222 (1975).

When an act is the acceptance of an offer during a telephone conversation, the contract is “made” where the acceptor speaks his or her acceptance.²

In this instance, the acceptance of the offer of employment appeared to occur during the telephone conversation between claimant and Mr. Postlewait, when claimant was in Union Star, Missouri. This case is similar to a recent Court of Appeals case, *Shehane v. Station Casino*.³ In *Shehane*, the claimant contacted respondent Station Casino at its casino in Kansas City, Missouri, by telephone while the claimant was at her home in Prairie Village, Kansas. After several contacts, a telephone job offer was made by the respondent’s representative to the claimant at her home in Prairie Village, Kansas. The claimant accepted the job during that conversation. A written contract already signed by the respondent’s Director of Entertainment was provided to the claimant by mail at her home in Prairie Village, Kansas. The contract was signed by the claimant and returned to the respondent at its Kansas City, Missouri, office. The claimant was subsequently advised that she needed to complete a drug screen before reporting to work. The claimant went to a lab in Missouri, completed the requested drug screening and began working for the respondent on that same day.

The Kansas Court of Appeals ruled that the creation of the contract in *Shehane* was complete when the offer of employment was accepted over the telephone. Additionally, the claimant signed the employment contract at her home in Prairie Village, Kansas. The court, therefore, found that Kansas jurisdiction attached to that claim.

Here, the circumstances are the reverse of *Shehane*. Claimant’s acceptance of the job offer by telephone appeared to occur while he was in Missouri. Additionally, claimant’s obligation to take a drug test was considered a condition precedent, rather than a condition subsequent, as it was made clear up front claimant had to pass the test before he would be hired. This test was performed in Missouri. Claimant was advised at the Kansas City International Airport location in Missouri that he had passed the test and was then put to work, again in the state of Missouri.

Claimant contends that it was the completion of the application at respondent’s office in Kansas which completed the contract. The Board disagrees. Mr. Postlewait testified that claimant would have the job once he passed the urinalysis. As this act took place in Missouri, that would indicate the last act necessary to complete the contract occurred in Missouri. In addition, the acceptance of the contract occurred during the telephone conversation between claimant and Mr. Postlewait, when claimant was in Union

² *Morrison v. Hurst Drilling Co.*, 212 Kan. 706, Syl. 1, 512 P.2d 438 (1973); see Restatement (Second) of Contracts § 64, Comment c (1974).

³ *Shehane v. Station Casino*, 27 Kan. App. 2d 257, 3 P.3d 551 (2000).

Star, Missouri. Under either scenario, the last act necessary to complete the contract would have occurred in Missouri.

The Board, therefore, finds that the determination by the Administrative Law Judge that the Kansas Workers Compensation Act does not apply to this fact situation should be affirmed and benefits to claimant should be denied.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Julie A. N. Sample dated December 9, 2002, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 2003.

BOARD MEMBER

c: James R. Shetlar, Attorney for Claimant
Maureen T. Shine, Attorney for Respondent (Midwest)
John D. Jurcyk, Attorney for Respondent (Burns & McDonnell)
Julie A. N. Sample, Administrative Law Judge
Director, Division of Workers Compensation